

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP 14 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JASON R.,)	2 CA-JV 2012-0047
)	DEPARTMENT B
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY, YANAHA R., and JAYLA R.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100JD201000161

Honorable Kevin D. White, Judge

AFFIRMED

Harriette P. Levitt

Tucson
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General
By Laura J. Huff

Tucson
Attorneys for Appellee
Arizona Department of Economic Security

V Á S Q U E Z, Presiding Judge.

¶1 Jason R., father of Yanaha R., born in October 2004, and Jayla R., born in September 2005, appeals from the juvenile court’s May 2012 order adjudicating the children dependent pursuant to A.R.S. § 8-201(13), following a contested hearing in February 2012.¹ Jason challenges the sufficiency of the evidence to support the order, asserting ADES did not meet its burden of proof. We affirm for the reasons stated below.

¶2 “[B]ecause ‘[t]he primary consideration in a dependency case is always the best interest of the child, the juvenile court is vested with a great deal of discretion’” in determining whether to grant a dependency petition. *Willie G. v. Ariz. Dep’t of Econ. Sec.*, 211 Ariz. 231, ¶ 21, 119 P.3d 1034, 1038 (App. 2005), quoting *Ariz. Dep’t of Econ. Sec. v. Superior Court*, 178 Ariz. 236, 239, 871 P.2d 1172, 1175 (App. 1994) (citations and internal punctuation omitted). We will affirm an order adjudicating a child dependent unless the court has abused that discretion, *In re Pima Cnty. Juv. Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987), or the record lacks reasonable evidence to support the factual findings upon which the court’s order is based, *Willie G. v. Ariz. Dep’t of Econ. Sec.*, 211 Ariz. 231, ¶ 21, 119 P.3d 1034, 1038 (App. 2005). As the reviewing court, we view the evidence “in the light most favorable to sustaining” the juvenile court’s order. *Id.*

¶3 Section 8-201(13) defines “dependent child,” providing in subsection (13)(a)(i) that a child is dependent if he or she is “[i]n need of proper and effective parental care and control and . . . has no parent or guardian . . . willing to exercise or capable of exercising such care and control.” A child is also dependent if “[d]estitute or

¹The children also were adjudicated dependent as to the mother, Nisa A.-R., but she is not a party to this appeal.

is not provided with the necessities of life, including adequate food, clothing, shelter, or medical care.” § 8-201(13)(a)(ii). And, under subsection 13(a)(iii) of the statute, a child is dependent if the child’s “home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian or any other person having custody or care of the child.” Neglect includes a parent’s “inability or unwillingness . . . to provide [a] child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child’s health or welfare.” A.R.S. § 8-201(22)(a). Jason contends on appeal that the Arizona Department of Economic Security (ADES) failed to sustain its burden of establishing the children were dependent with clear and convincing evidence. But ADES was only required to establish the children’s dependency by a preponderance of the evidence, *see* A.R.S. § 8-844(C)(1); Ariz. R. P. Juv. Ct. 55(C), which it did here.

¶4 At the end of the dependency hearing the juvenile court found, after considering “the testimony and evidence” and weighing the credibility of the witnesses, ADES had sustained its burden of proving five out of the six allegations of the December 1, 2011 dependency petition, as amended at the hearing, at ADES’s request. The court specified ADES had proved allegations VI(B)(1), (2), (3), (4), and (6) of its petition, and entered a final, appealable order on May 1, 2012. With respect to Jason’s neglect of the children, the court found, *inter alia*, he was “unable to provide his children with food, clothing, shelter, supervision, medical care, and/or the other basic necessities of life.” The court added he was “unable and/or unwilling to parent” the children, had “not cared for [them] or provided for their needs for an extended period of time,” and had “failed to engage in services to assist him in making necessary behavioral changes in order to safely

and adequately parent the vulnerable children.” Furthermore, the juvenile court found, Jason had been offered services but had not actively engaged in them, and although he had begun individual therapy as recommended, “after only 7 1/2 sessions, he [chose] not to engage in therapy,” and had not done so since October 2011. The court noted Jason’s therapist had reported Jason lacked “insight into the impact of certain lapses in judgment in parenting,” which were a “potential barrier” to his succeeding.

¶5 On appeal, Jason contends there was insufficient evidence as to each of the allegations the juvenile court found ADES had proved, relying primarily on his own testimony about ways in which he had “established his paternity of his two children,” and demonstrated he had supported them financially and emotionally. He asserts the court’s finding that he refused to engage in services was erroneous. Additionally, he minimizes the significance of the evidence relating to his neglect and abuse of his older child, Quiy’ra, to whether Yanaha and Jayla were dependent.² And, he questions the credibility of certain evidence and the weight to which it was entitled.

¶6 To the extent there were conflicts in the evidence, it was for the juvenile court, not this court, to resolve them, because it is “in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004); *see also Pima Cnty. Juv. Action No. 93511*, 154 Ariz. at 546, 744 P.2d at 458 (as fact-finder, juvenile court in best position to weigh evidence and judge credibility of witnesses). We will not reweigh the evidence, which is essentially what Jason is asking us to do. *See Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207

²The juvenile court adjudicated Jason’s son Jason Jr. and his daughter Quiy’ra dependent in December 2010, and severed his rights to Jason Jr. in December 2011.

(App. 2002). Viewed in the light most favorable to sustaining the juvenile court's order, *Willie G.*, 211 Ariz. 231, ¶ 21, 119 P.3d at 1038, the record, which includes the testimony of Child Protective Services (CPS) case manager Lee Eastman, Jason's own testimony, and numerous exhibits that were introduced at the hearing, there was ample evidence to support the court's factual findings and its conclusion that these children were dependent.

¶7 The evidence established there had been a history of domestic violence between the children's mother, Nisa, and Jason, and that he had been unable to parent Jason Jr. or Quiy'ra properly; his abuse and neglect of both of them had resulted in the adjudication of both of these older children as dependent and the termination of Jason's rights to Jason Jr. As ADES points out in its answering brief on appeal, evidence relating to the dependency of Jason's two older children, which the juvenile clearly considered, supported the finding that Yanaha and Jayla were dependent because conditions that rendered the older children dependent still existed at the time of the adjudication hearing. *See In re Pima Cnty. Juv. Action No. 96290*, 162 Ariz. 601, 604, 785 P.2d 121, 124 (App. 1990). In that regard, when Eastman was asked whether she believed Jason could exercise proper parental care and control of Yanaha and Jayla, she responded that she did not, in part because of Jason's abuse and neglect of his other two children. She explained this placed Yanaha and Jayla at risk for emotional abuse and "excessive physical discipline." She added that Jason had not changed those aspects of his life or behavior that had rendered the other children dependent.

¶8 Eastman testified further that Jason had never established a parent/child relationship with Yanaha and Jayla, he had "never cared for them," he was unemployed, he had never provided CPS with a letter proving he was receiving disability payments as

required by his case plan, and he had failed to establish paternity even though the children were ages six and seven. She testified he had told her he could take the children to his mother and Jason's grandfather in another state, despite having previously told her that his mother was a "crackhead." The paternal grandfather, Eastman learned from the paternal grandmother, was ninety years old and not capable of taking care of two small children.

¶9 Although Jason testified he always believed he was the father of Yanaha and Jayla, he did not arrange for paternity testing until a few weeks before the dependency hearing. Then, after his children had been tested, he refused to submit to it himself; instead, to establish his paternity he admitted it at the pretrial conference in January 2012. In any event, he had not established a relationship with Yanaha and Jayla, having had very little contact with them. Because of his failure to establish paternity, he had no ability to obtain custody of them after they had been removed from the mother's custody because of substance abuse and neglect. He had been unable to protect them from what he had viewed as their dangerous placement with the maternal grandmother; he had reported to CPS the maternal grandfather allegedly had sexually abused the children's mother.

¶10 The evidence, including Jason's own testimony, also established Jason did not have stable housing or a stable source of income and could not provide the children with shelter, food and other basic necessities. Although he claimed to be disabled and receiving disability payments, as we previously noted, Eastman testified he had not provided CPS with proof of those payments. And, contrary to Jason's assertion on appeal, there was evidence that he refused to participate in reunification services. For

example, Eastman testified that when she discussed reunification services with Jason, he told her “he was not going to work with CPS, he did not want to do any services, he just wanted to go to trial.”

¶11 Based on the record before us, there was ample evidence to support the juvenile court’s conclusion that ADES had sustained its burden of proving by a preponderance of the evidence that Yanaha and Jayla were dependent. Therefore, the court’s order is affirmed.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge